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CITATIONS

618396—44——1

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. ——

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ESTATE OF ALEXANDER J. SHAMBERG, DECEASED, ISIDOR W. SHAMBERG, ADMINISTRATOR

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit, entered in the above case on September 29, 1944, affirming the decision of the Tax Court of the United States.

OPINIONS BELOW

The opinions in the Tax Court (I R. A. 2–36) are reported in 3 T. C. 131. The opinions in the Circuit Court of Appeals (II R. 1675–1705) are not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on September 29, 1944 (II R. 1706). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the bonds of the Port of New York Authority are those of a "state" or a "political subdivision" of a state within the meaning of Section 22 (b) (4) of the Revenue Acts of 1936 and 1938 and Article 22 (b) (4)–1 of Treasury Regulations 94 and 101, so that the interest received by the holders of the bonds is exempted from the federal income tax.

2. If the obligations are not those of a "state" or a "political subdivision" of a state within the meaning of the statute and regulations, whether there is any constitutional objection to the tax.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The provisions of the Constitution and the statutes and regulations involved are set forth in the Appendix, *infra*.

STATEMENT

This case involves the income tax liability of Alexander J. Shamberg for the calendar years 1937 and 1938, and presents for determination the question whether interest received by him

during those years upon bonds of two certain issues of the Port of New York Authority is subject to tax. Shamberg having died while the case was pending in the Tax Court, his administrator was substituted for him.

The facts relating to the nature and activities of the Port of New York Authority (hereinafter called the Authority) were stipulated by the parties. They may be summarized as follows:

A. ORGANIZATION AND NATURE OF THE AUTHORITY

The Authority is a body politic and corporate, created by a compact entered into between the States of New York and New Jersey on April 30, 1921, and approved by Congress by joint resolution of August 23, 1921.[1] It is wholly owned by the two states and its projects are all operated in the interest of the public. No profits inure to the benefit of private persons. (I R. A. 36, 84) The compact was induced by the widely recognized necessity for joint state action in the development as a whole of the port of New York, which lies partly within the jurisdiction of each state. It created a district to be known as the "Port of New York District" (its boundaries being described in particularity), comprised of areas in both states and the waters between them; there are included within its limits approximately 200

[1] Laws of New York (1921), Vol. 1, c. 154, p. 492; Laws of New Jersey (1921), c. 151, p. 412; Joint Resolution of August 23, 1921, c. 77, 42 Stat. 174.

separate municipalities and a population of over 10,000,000. (I R. A. 37–38, 39.)

Article VI of the compact [2] vested the Authority with—

> * * * power and authority to purchase, construct, lease and/or operate any terminal or transportation facility within said district; and to make charges for the use thereof; and for any of such purposes to own, hold, lease and/or operate real or personal property, to borrow money and secure the same by bonds or by mortgages upon any property held or to be held by it * * *

except that property held by either state or by any of their municipalities should not be taken without the consent of the state or municipality affected. It was further provided that the powers granted by Article VI should not be exercised until the two states had approved a comprehensive plan for development of the port.

Article VIII provided that the jurisdiction of the public utilities commission of each state should extend "to railroads and to any transportation, terminal or other facility owned, operated, leased or constructed by the port authority, with the

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[2] All of the compacts, statutes, and resolutions relating to the Authority are compiled in two pamphlets which are part of the Record herein as Stipulation Exhibits D and E. An additional pamphlet containing the statutes relating to the Holland Tunnel is in the Record as Stipulation Exhibit J. I R. A. 43, 57.)

same force and effect as if such railroad, or transportation, terminal or other facility were owned, leased, operated or constructed by a private corporation."

The Authority was directed to make plans for the development of the district (Article XI), was empowered to make recommendations to the two states (Article XII), to intervene in proceedings affecting the commerce of the port and to petition bodies such as the Interstate Commerce Commission upon matters within the jurisdiction (Article XIII).

Article XVIII authorized the Authority, subject to the exercise of the power of Congress, to make rules and regulations relating to navigation and commerce, which rules, however, are to be effective only when concurred in or authorized by the legislatures of both states. The states agreed by Article XIX to provide penalties and means of enforcement of the orders, rules and regulations of the Authority. The Authority has made rules and regulations with respect to its bridges and tunnels which have been concurred in by the legislatures of the two states. Penalties for their violation were provided by state law, and the inferior criminal courts of the states were given jurisdiction to enforce these penalties. (I R. A. 86).

The powers of the Authority are vested in a board of 12 commissioners, six from each state. It has been the invariable practice of the com-

missioners to take an oath of office, and they may be removed only upon charges and after a hearing. Their actions are binding only after approval by a majority of the commissioners from each state, and the Governor of each state has a veto power over the acts of the commissioners from his state. (I R. A. 84–85.)

The comprehensive plan, adopted by the two states and consented to by Congress in 1922,[3] sets forth the principles upon which the development of the port should proceed, and provides that (Section 8):

> The port of New York authority is hereby authorized and directed to proceed with the development of the port of New York in accordance with said comprehensive plan as rapidly as may be economically practicable and is hereby vested with all necessary and appropriate powers not inconsistent with the constitution of the United States or of either state, to effectuate the same, except the power to levy taxes or assessments. * * * The port authority shall be regarded as the municipal corporate instrumentality of the two states for the purpose of developing the port and effectuating the pledge of the states in the said compact, but it shall have no power to pledge the credit of either

[3] Laws of New York (1922), c. 43; Laws of New Jersey (1922), c. 9; Joint Resolution of July 1, 1922, c. 277, 42 Stat. 822.

state or to impose any obligation upon either state or upon any municipality, except as and when such power is expressly granted by statute, or the consent by any such municipality is given.

The Authority has not up to this time applied for any grant of power to pledge the credit of either state, or to impose any obligation on either state, and has never applied to any municipality for the power to impose any obligation upon it. (I R. A. 45–46.)

The Authority is not subject to the debt limiting provisions of the constitutions of the two states; it was created in order to establish an agency with a borrowing power independent of state and municipal debt limitations. (I R. A. 37, 83–84.)

B. Operations

Vehicular Crossings. Pursuant to concurrent legislation by the two states the Authority has constructed, with the approval of the War Department, and owns and operates four bridges in the port area. These are the Goethals Bridge, the Outerbridge Crossing, the George Washington Bridge and the Bayonne Bridge. Consent for the construction of these bridges was granted by Congress in Acts of March 2, 1925, in accordance with the provisions of the Act of March 23, 1906, c. 1130, 34 Stat. 84, regulating the construction of bridges over navigable waters. Congress reserved

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the right to alter, amend or repeal each act (cc. 389-391, 43 Stat. 1094–1095). (I R. A. 48–55.) The Authority also operates the Holland and Lincoln Tunnels under the Hudson River. It constructed and owns the Lincoln Tunnel. The Holland Tunnel was constructed by the two states and operated by them through commissions until 1930, when it was turned over to the Authority; in 1931 the control, operation, tolls and other revenues of the tunnel were vested in the Authority, and it paid over to the two states the proceeds of a $50,000,000 issue of its own bonds. These bonds were known as "Interstate Bridge and Tunnel Bonds—Series E", and bonds of this issue are one of the two bond issues involved in this case. The other bond issue here involved was known as "General and Refunding Bonds—First Series" and was issued in connection with the financing of the Lincoln Tunnel. (I R. A. 58–65.)

Tolls are charged for the use by vehicles of the bridges and tunnels described above and the Authority advertises in order to increase traffic thereon. (I R. A. 66, 69.) Prior to the adoption of the comprehensive plan there were ferry companies operating between New York and New Jersey, and the Authority's bridges and tunnels are in competition with these ferries. As a result of this competition some of the ferries have either ceased operations or curtailed their services, while others have reduced their rates to meet the com-

petition. In 1933 the Authority successfully opposed an application by a private company to construct a competing bridge across the Hudson. (I R. A. 89–92.)

Inland Terminal Building. The Authority has constructed the first unit of a proposed system of inland terminals in the block bounded by 15th and 16th Streets, 8th and 9th Avenues in Manhattan. Its cost was $16,000,000 which was financed by the sale of that amount of "New York-New Jersey Terminal Bonds—Series D", and it began operation in October 1932. The building consists of a basement, sub-basement, street level floor and 15 upper floors. The second through the fourteenth floors of the building (1,880,000 square feet) and a small portion of the street level floor (20,000 square feet) are rented for manufacturing, loft, commercial and industrial uses. A small portion of the seventh, the majority portion of the fifteenth floor and all of the sixteenth floor are used as Authority administration offices. The basement and the majority portion of the ground floor of the building (a total of 266,000 square feet) are devoted to terminal purposes. Construction of such a building, that is, one used mostly for ordinary commercial purposes, was necessary in order to have a terminal at all, because a building at that location designed for terminal purposes only could not produce sufficient revenue to be economically

practical on a self-liquidating basis, the basis upon which the states had directed the Authority to construct it. The Authority has entered into agreements with eight trunk line railroads relating to the use of the Inland Terminal Building as a terminal station, at specified rates. The Authority operates the non-terminal portion of the building and maintains the terminal portions thereof, but the actual operation of the terminal facilities has been conducted by the lessee railroads themselves through a joint agent who is not an employee of the Authority. (I R. A. 66–70.)

Bus Service. Since 1931, and through the taxable years the Authority operated a bus service over the Goethals Bridge. (I R. A. 93.)

Use of Other Properties. In connection with the construction of the bridges and tunnels referred to, and the approaches thereto, the Authority has acquired various properties. Changes in plans have made the continued ownership by the Authority of some of these properties no longer necessary, and with respect to others it has not yet become necessary to utilize them for the purpose for which they were acquired. Pending such utilization or disposition of these properties the Authority has rented them to the public for the purpose of minimizing loss of capital investment. (I R. A. 71–72.)

Port Development. During the term of its existence the Authority has engaged in many

studies and surveys, has taken part in hearings, has sought federal legislation, has taken part in committees concerned with traffic in the district, has participated in actions before the Interstate Commerce Commission and has carried on similar activities in furtherance of the general work of port development and port protection, in order to improve transportation conditions, reduce living costs, and enable the Port of New York to meet the competition of other ports. (I R. A. 73–78.)

C. FINANCIAL SUMMARY

The Authority's facilities and activities have been financed principally by its bond issues. It has also received a (comparatively) small amount as appropriations and advances from the two states, and from federal grants, as shown in the following table (I R. A. 78):

State Appropriations	$2,856,693.11
Federal Grants	6,450,803.65
State Advances	18,650,000.00
Bond and Note Issues	205,551,582.82

The Authority's outstanding bonds (excluding those held by the Authority itself) on January 1, 1942, were in the amount of $178,781,000. (I R. A. 79).

The Authority's revenues are derived principally from the operation of its facilities and properties, and of these the main sources are the vehicular crossings. Additional revenues have come from interest on bank balances, and the state

appropriations and federal grants which it has received. (I R. A. 80.) Its net income from the operation of the four bridges, two tunnels and the Inland Terminal for each of the years from 1937 to 1941, after payment of operating expenses and interest upon funded debt, was as follows (summarized from Paragraph 103 of the stipulation, I R. A. 81–82):

Year	*Amount*
1937	$5,437,485.79
1938	4,170,698.60
1939	5,224,111.46
1940	6,306,399.76
1941	8,512,581.66

The two states have adopted legislation regulating the use by the Authority of its revenues and they have been used as so directed. They have been expended solely for the operating and administrative expenses of the Authority and for interest upon and retirement of outstanding debt. (I R. A. 82.) The revenues for the year 1941 were expended as follows (I R. A. 83):

Interest on debt		28.58%
Sinking and Reserve Funds for Retirement of Debt		46.78%
Operation and Maintenance:		24.64%
Policing	4.19%	
Port Development & Protection	.47%	
Lighting and Ventilation	2.68%	
Administration and Law	2.39%	
Insurance and Pensions	6.06%	
Cleaning	.78%	
Heating	.42%	
Toll Collections	1.85%	
Other Operating Expenses	5.80%	
	24.64%	
		100.00%

The distribution of revenues for 1941 was typical of that for prior years, with minor variations for the items of operation and maintenance; the percentage of revenue expended on interest has been decreasing and the percentage devoted to the retirement of debt has been increasing as the funded debt gets closer to maturity. (I R. A. 83.)

In the compact pursuant to which the Authority was created the states agreed to make annual appropriations (not in excess of $100,000 for each state) for expenses of the Authority until revenues from its own operations were sufficient. These annual appropriations were discontinued in 1934, at which time the Authority's revenues from its bridges, the Holland Tunnel and Inland Terminal No. 1 became sufficient to meet its expenses. (I R. A. 85.)

D. IN GENERAL

In the operation of its bridges and tunnels the Authority maintains a uniformed police force, the members of which are designated by statute as regular police and peace officers of both states. (I R. A. 65.) The property of the Authority and the bonds and other securities issued by it are exempt from state taxation in both states. In both states its bonds are legal trust investments and financial institutions are authorized to give security to the Authority for deposits made by it. It has the power of condemnation, its employees

may join the New York State retirement system and the Authority has been held to be immune from suit. No tax or assessment is levied within the Port District by or on behalf of the authority. (I R. A. 85, 88.)

Had he been alive at the time of the hearing, Shamberg would have testified that he acquired the bonds of the Authority here involved in reliance upon legal advice that the income therefrom was immune from federal income taxation under the Constitution and that it was further expressly exempt from such tax under the existing statutes and regulations. (I R. A. 88–89.)

The Commissioner determined deficiencies of $1,580 and $913.62 for the years 1937 and 1938, respectively, based upon the inclusion in gross income of the interest received upon the Authority bonds. (I R. A. 2.) The Tax Court held the interest to be exempt from tax under Section 22 (b) (4) of the Revenue Acts of 1936 and 1938, and reversed the Commissioner's determination. Five judges dissented, and one did not participate. (I R. A. 2–36.) The Circuit Court of Appeals, one judge dissenting, affirmed the Tax Court's decision upon the same ground (II R. 1675–1705.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In construing the term "political subdivision" in Section 22 (b) (4) of the Revenue Acts

of 1936 and 1938 to mean state instrumentalities generally.

2. In construing the requirement of Article 22 (b) (4)–1 of Treasury Regulations 94 and 101 that a "political subdivision" must possess "the right to exercise part of the sovereign power of the State" and in holding that the Authority is a political subdivision of a state within the meaning of the regulations.

3. In construing the term "issued on behalf of a state" in Article 22 (b) (4)–1 of Treasury Regulations 94 and 101 and in holding that the Authority's bonds were issued on behalf of a state within the meaning of the regulations.

4. In holding that Congress intended an organization created pursuant to an interstate compact to be classed as a "political subdivision" of a state within the meaning of Section 22 (b) (4).

5. In holding that interest on bonds of the Port of New York Authority is exempt from tax under Section 22 (a) and (b) (4) of the Revenue Acts of 1936 and 1938.

6. In failing to hold that interest on bonds of the Port of New York Authority is subject to tax under Section 22 (a) and (b) (4) of the Revenue Acts of 1936 and 1938, and in failing further to hold that there is no constitutional objection to the tax.

7. In affirming the decision of the Tax Court.

REASONS FOR GRANTING THE WRIT

1. This case presents first for consideration the meaning and scope of Section 22 (b) (4) of the Revenue Acts of 1936 and 1938 (Appendix, *infra*), which exempts from income tax interest on "the obligations of a State, Territory, or any political subdivision thereof, * * *." If, as we contend, the statutory exemption does not extend to obligations of such an instrumentality as the Authority, then the case presents the further question whether there is any constitutional objection to the tax.

These questions are of great public importance not only to the Government and to the Authority but to the large and growing number of other state instrumentalities of a similar nature. We have listed in footnote 9, *infra*, p. 23, a number of such agencies which have been created by interstate compacts to which Congress has consented. In addition a very large number have been created by the several states acting individually. In New York alone there are 39 authorities or commissions (the earliest of which was created in 1929 and 13 of which have been created since 1940) with power to operate specific projects and to issue bonds which are not debts of the state and are payable solely out of the receipts from the operations of the particular authority or com-

mission.[4] It is important administratively that an authoritative guide be furnished for the determination of the tax status of the interest on such obligations. Such a guide is also important from the standpoint of the agencies, especially those which have financing programs in contemplation, for much uncertainty now attends such financing.[5]

The Government believes that its position is sound and that the questions involved should be settled so that protracted litigation throughout the various circuits may be avoided. In addition, if we are correct in our position but must await a later case, the Government will have lost substantial revenues in the interim.

2. The holding by the majority below that the obligations of the Authority are those of a "state" or a "political subdivision" within the meaning of Section 22 (b) (4) is in substantial conflict with *Helvering* v. *Gerhardt,* 304 U. S. 405, which upheld the imposition of an income tax upon the salaries of employees of the Authority. Although

[4] There are eight park, parkway, and highway authorities; five bridge and tunnel authorities; three market authorities; two public utilities authorities; sixteen housing authorities; and five miscellaneous authorities. See McKinney's Cons. Laws of New York, Book 42, Articles 2–7. As Judge Frank has pointed out in his dissenting opinion (II R. 1701), among the miscellaneous authorities are one to operate a planetarium (Article 7, Title 2) and one to operate an industrial exhibit (Article 7, Title 3).

[5] See the materials referred to by Judge Frank. (II R. 1688–1689.)

the *Gerhardt* case did not directly involve Section 22 (b) (4), it did necessitate consideration of similar language in a Treasury Regulation. The opinion first dealt with, and rejected, a contention that the employees enjoyed constitutional immunity from the tax, and then considered the effect of Article 643 of Treasury Regulations 77, which as originally promulgated provided:

> Compensation paid to its officers and employees by a State or political subdivision thereof for services rendered in connection with the exercise of an essential governmental function of the State or political subdivision, including fees received by notaries public commissioned by States, is not taxable.

The Court said (p. 423):

> If the regulation be deemed to embrace the employees of a state-owned corporation such as the Port Authority, it was unauthorized by the statute. But *we think it plain that employees of the Port Authority are not employees of the state or a political subdivision of it within the meaning of the regulation as originally promulgated*—an additional reason why the regulation, even before the 1938 amendment, was ineffectual to exempt the salaries here involved. [Italics added.]

It will be observed that the regulation laid down two requirements for the tax exemption: (1) The compensation had to be paid by a state

or political subdivision, and (2) it had to be paid to one who rendered services in connection with an essential governmental function. In holding that the regulation was inapplicable the Court might have relied upon the absence of either of these factors. Contrary to the interpretation of the opinion by the majority below (II R. 1682), the Court did not rely upon the absence of the second factor; it chose as its reason for holding the regulation inapplicable the ground that the Authority is not a state or a political subdivision of a state. It is true that the Court added "within the meaning of the regulation", but there is no basis for attributing to the term "political subdivision" as used in the regulation any different meaning from that to be attributed to it as used in Section 22 (b) (4).

3. Independently of the ruling in the *Gerhardt* case, the conclusion should have been reached, we believe, that the obligations of the Authority are not those of a "state" or a "political subdivision" of a state within the meaning of the exempting provision. We merely indicate here, without elaboration, the reasons for this view, to show the substantial character of the questions decided by the court below.

The suggestion by the circuit court of appeals that the Authority's obligations are those of a state or are issued on behalf of a state is at war with the facts. Indeed, it is precisely because the

Authority's obligations are not contracted "by or on behalf of" either of the two states that the state constitutional limitations on the contracting of such debts have been successfully avoided.

Nor are the Authority's obligations those of a "political subdivision" of a state. The majority opinion below does not suggest that the Authority is a "political subdivision" within the usual or ordinary meaning of the term, but holds that Section 22 (b) (4) should be read broadly as applying to state instrumentalities in general. But "instrumentality" is a word of broader scope than the phrase "political subdivision" found in the statute. The approach to the question taken in the opinion below not only violates the canon that exempting provisions of the tax statutes must be strictly construed, but is inconsistent with the purpose of Congress in enacting the section and also conflicts with the Treasury Regulations. Nor is it supported by the opinions of the Attorney General,[6] relied on in the majority opinion. Those opinions, as well as the Regulations, define a "political subdivision" in terms of the powers of sovereignty which may be exercised, and no such powers have been delegated to the Authority. The Authority was not given supervisory powers over other than its own facilities, and was itself made subject to supervision by State regulatory bodies.

[6] 30 Op. A. G. 252; 38 Op. A. G. 563.

The legislative history shows that the exempting provision, which first appeared in the Income Tax Act of 1913, c. 16, 38 Stat. 114, 166, was dictated by constitutional doubts concerning the power of Congress to tax the income from state and municipal bond issues. (50 Cong. Record, Part 1, p. 508.) *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 158 U. S. 601, had held that Congress was without power to tax the interest on bonds of the City of New York. However, it was clear at that time from *South Carolina* v. *United States*, 199 U. S. 437 (1905), that any implied immunity of the states from the impact of the federal taxing power extended only to those activities of a strictly governmental character essential to the continued existence of the states, and did not extend to activities of a proprietary nature. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, had already been decided (1911), in which the Court had said (p. 172), "It is no part of the essential governmental functions of a State to provide means of transportation, * * *" and had referred to (p. 158) "the establishment of a judiciary, the employment of officers to administer and execute the laws and similar governmental functions * * *" as indicating the nature of state activities which enjoyed immunity from the effects of the federal taxing power. Thus at the time of the enactment of the Income Tax Act of 1913 there was no constitutional doubt concerning the power of Con-

gress to tax a proprietary instrumentality of a state directly, and, *a fortiori*, to tax a private person on interest received from bonds issued by such an instrumentality. Insofar as the decision below holds that the Authority is not a proprietary instrumentality, it is, in our view, in conflict with *South Carolina* v. *United States*, *supra*, and the cases which have followed it.

4. Even upon the assumption that Section 22 (b) (4) applies to state instrumentalities in general, there remain in the instant case important questions growing out of the fact that the Authority was created by an interstate compact which required the consent of Congress before it could become effective. And the resolutions granting consent to the compact and the comprehensive plan contain provisos expressly reserving to Congress "the right to alter, amend or repeal".

Neither New York nor New Jersey can, acting unilaterally, withdraw from the compact.[7] Furthermore, the compact does not provide, as have others,[8] that it may be dissolved by mutual consent of the two states. We think that therefore the two states could not, without the consent of Congress, jointly abolish the Authority for such attempted action would amount to a new compact

[7] *Green* v. *Biddle*, 8 Wheat. 1, 91–93; *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 725; *Virginia* v. *West Virginia*, 11 Wall. 39; *Poole* v. *Fleeger*, 11 Pet. 185, 209–211.

[8] E. g., see the compact involved in *Hinderlider* v. *La Plata Co.*, 304 U. S. 92, 109.

which would in turn require Congressional consent. But Congress, by the simple act of repealing the resolution granting consent to the compact, may, with one stroke, abolish the Authority. In these circumstances it is wholly inaccurate to treat the Authority as an instrumentality of the states alone.

This aspect of the case is not peculiar to the Port of New York Authority, but has a general importance, for recent compacts approved by Congress have authorized the creation of at least six commissions or authorities with functions more or less similar to those of the Port of New York Authority.[8]

5. In our view all of the reasons which show that the statutory exemption does not apply to the obligations of such an instrumentality as the Authority make clear also that there is no constitutional objection to the tax, and that there

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[8] Lake Champlain Bridge Commission, Joint Resolution of February 16, 1928, c. 87, 45 Stat. 120, amended by Joint Resolution of August 23, 1935, c. 625, 49 Stat. 736, and Joint Resolution of June 4, 1936, c. 504, 49 Stat. 1472; Niagara Frontier Bridge Commission, Act of June 17, 1930, c. 499, 46 Stat. 764; Buffalo and Port Erie Public Bridge Authority, Joint Resolution of May 3, 1934, c. 196, 48 Stat. 662; Delaware River Joint Toll Bridge Commission, Act of August 30, 1935, c. 833, 49 Stat. 1058; Palisades Interstate Park Commission, Joint Resolution of August 19, 1937, c. 706, 50 Stat. 719; The Maine-New Hampshire Interstate Brige Authority, Act of July 28, 1937, c. 530, 50 Stat. 538.

could have been none even when the immunity doctrine was at its height. *South Carolina* v. *United States, supra.* In any event recent decisions have held that no private person enjoys any immunity from the federal income tax simply because his income happens to be derived from dealings with a state or a state instrumentality. *Helvering* v. *Gerhardt,* 304 U. S. 405; *Graves* v. *N. Y. el rel. O'Keefe,* 306 U. S. 466; *Metcalf & Eddy* v. *Mitchell,* 269 U. S. 514; *James* v. *Dravo Contracting Co.,* 302 U. S. 134; *Alabama* v. *King & Boozer,* 314 U. S. 1; *Helvering* v. *Mountain Producers Corp.,* 303 U. S. 376. We think that no valid distinction can be drawn between these cases and the case of a private person who receives interest on bonds of a state or a state instrumentality. The interest is simply compensation for the use of borrowed money and such compensation stands in no different constitutional light from compensation paid for any other kind of service, or for goods. It is our position that recent decisions preclude any implication to the contrary which might be drawn from *Pollock* v. *Farmers' Loan & Trust Co.,* 157 U. S. 429, 158 U. S. 601, and that in any event the Sixteenth Amendment empowers Congress to tax "incomes, from whatever source derived," which includes interest on bonds issued by a state or a state instrumentality. See Mr. Justice Black's concurring opinion in the *Gerhardt* case, *supra.*

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

NOVEMBER, 1944.